

REPORTABLE

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ WRIT PETITION (CIVIL) NO. 3572 OF 2008

% **Reserved on:** 19th May, 2009
Date of Decision : 22nd July, 2009.

POONAM KHATTAR Petitioner.
Through Mr. Rajiv Bansal & Mr. Manu Beri,
Advocates.

VERSUS

LIFE INSURANCE CORPORATION OF INDIA & ORS. Respondents.
Through Mr. Ravinder Sethi, Sr. Advocate
with Mr. Kamal Mehta, Advocate for
respondent No. 1.
Ms. Isha Khanna, Advocate for respondent
No. 6.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J:

1. Ms. Poonam Khattar, the petitioner and Ms. Swati Chopra, the respondent No. 6 are agents of Life Insurance Corporation of India, the respondent No. 1. The petitioner by way of the present writ petition has challenged order dated 18th February, 2008 passed by the Executive Director (Marketing) of the respondent No. 1 directing withdrawal of credit of business in respect of policy Nos. 113781187, 113781188 and 113781819 from the petitioner and granting the same to the respondent No. 6. The aforesaid policies are keyman policies, which were obtained by

M/s Addi Industries Limited, the respondent No. 7 in favour of Mr. C.L. Jain, Mr. Hari B. Bansal and Mr. Abhishek Bansal (beneficiaries for short) on payment of premium of Rs.19,03,370/-, Rs.9,22,805/- and Rs.9,15,530/- respectively.

2. Respondent No. 1 has raised a preliminary objection about maintainability of the writ petition relying upon Regulation 20 of the Life Insurance Corporation of India (Agents) Regulations, 1972. The said regulation reads as under:-

"20. Appeals:

(1) Every agent shall have a right of appeal to the relevant appellate authority set out in Schedule VII against an order terminating the appointment which has been passed under regulation 15 or regulation 16 or sub-regulation (1) of regulation 17 or regulation 18."

3. The aforesaid contention is liable to be rejected as in the present case no order terminating the agency of the petitioner has been passed under Regulations 15, 16, 17(1) and 18.

4. Facts in brief, relevant for the present decision are as under:-

(a) Respondent No. 6 had submitted proposals dated 18th January, 2003 of respondent No. 7 for issue of three keyman policies. The said proposals were signed by respondent No. 7 and were registered with the respondent No. 1 on 29th January, 2003 after medical tests had been performed on the three insured persons, i.e. the beneficiaries, on 28th January, 2003.

(b) Respondent No. 7 vide letter dated 30th January, 2003 requested for withdrawal of all the three proposals and thereafter submitted

another letter dated 7th February, 2003 written by the beneficiaries confirming the said withdrawal.

- (c) On 31st January, 2003, respondent No. 1 received a new proposal form from the respondent no. 7 for three keymen policies but through the petitioner as an agent. Beneficiaries were the same as in the first proposal.
 - (d) On 13th February, 2003, the respondent No. 1 refunded the amounts deposited by respondent No. 7 in respect of the first proposal, which was submitted through respondent No. 6 by cheques of the same date after deducting medical fee and processing fee. The first proposal was allowed to be withdrawn. Hence it was no longer pending.
 - (e) The proposals submitted by respondent No. 7 through petitioner were accepted and three insurance policies were issued.
 - (f) The petitioner was given credit as an agent, who had introduced the said policies and the commission was released to her.
 - (g) Respondent No. 6 subsequently filed a complaint dated 25th April, 2003 to the Executive Director (Marketing) alleging interference by the petitioner.
 - (h) The Manager (Sales), Meerut Division, issued instructions directing release of commission to respondent No. 6 in respect of the three policies instead of the petitioner.
5. Two orders passed in this regard dated 30th May, 2006 and 18th July, 2006 withdrawing credit from the petitioner and granting credit to

respondent No. 6 were quashed by this Court in the judgment dated 25th September, 2007 in W.P. (C) No. 14693/2006, titled ***Poonam Khattar versus LIC of India and Others***. Learned single judge observed that that the two orders had been passed without the petitioner being served with notice, informed about the allegations and without granting suitable and reasonable opportunity of being heard. The two orders were also not reasoned. By the said judgment, the respondent No. 1 was given liberty to pass a fresh order after giving reasonable opportunity to the petitioner to represent against the allegations leveled after issue of show cause notice outlining the allegations. The respondent No.1 was required to pass a reasoned order dealing with the contentions of the petitioner. The impugned order dated 18th February, 2008 in the present writ petition has been passed after directions given by this Court in the order dated 25th September, 2007.

6. The impugned order dated 18th February, 2008 does not set out the aforesaid facts or the facts as found. It does not accept or reject the facts as pleaded by the petitioner. The order reproduces the stand of the petitioner in various paragraphs and rejects the same substantially on the ground that the contention and the facts pointed out by the petitioner were irrelevant or having no nexus or connection to the issue under consideration. This is apparent from the reasoning given in the impugned order. The gist of the contentions raised by the petitioner and reasons for rejection are reproduced below:-

- (1) The petitioner had alleged that she was a regular agent of the family members or promoters of respondent No. 7 in PPF and other investment schemes. The aforesaid fact is not disputed in the impugned order but was considered to be irrelevant for the issue under consideration.
- (2) Respondent No. 7, it was submitted, had contacted the petitioner for procurement of insurance policies and formalities were completed and insurance policies were issued in February-March, 2003. It was alleged that the petitioner had no knowledge that respondent No. 7 had earlier made a proposal for the same policies through another agent, i.e., respondent No. 6 and the said agent belongs to another division. The aforesaid contentions were rejected as irrelevant and they cannot alter the outcome of the case. In the impugned order it is stated that whether a party discloses his previous pending proposal or not to the second agent, the first agent is entitled to credit of the proposal in view of the administrative instructions unless the proposal has become stale and is cancelled and a period of one year has expired from the date of the proposal or from the date of medical examination in cases where medical examination is mandated.
- (3) The petitioner had stated that it was open to a client to change their agent and the petitioner cannot be penalized for the same. The order in this regard records that the client has the

prerogative and right to change their agent and route his business but states that this cannot change the outcome of the decision.

- (4) In the second proposal, the respondent No. 7 had not mentioned about any previous proposal or withdrawal thereof and the petitioner had no knowledge about any previous proposal. Without disputing the aforesaid facts, the contention has been rejected in the impugned order stating, inter alia, that it was irrelevant that the party had not mentioned about the first proposal in the second proposal form and the plea was of no avail.
- (5) Respondent No. 7 had made allegations against respondent No. 6, contending misrepresentation about the benefits and that she had never visited or met the three insured or any of the officers of respondent No. 7 company and in fact the first proposal was submitted through one benami agent, a Chartered Accountant by profession, who was acting as a representative of respondent No. 6. The petitioner wanted the aforesaid facts to be verified. In the impugned order dated 18th February, 2008 it has been held that there was no need for verification as the stand of the parties was clear in their submissions. The allegations made against the respondent No. 6 have not been rejected or accepted in the impugned order.

7. One of the contentions raised by the petitioner in her written reply was that she should be furnished full details and nature of charges, allegations leveled against her along with supporting documents furnished by the respondent No. 6, copy of the complaint and details of violations of the code of conduct. In the impugned order, the aforesaid contention and request of the petitioner is rejected on two grounds. Firstly, breach of a rule framed to avoid friction between two agents is automatic or pre-determined, irrespective of the fact that the breach was made unknowingly. Secondly, along with the impugned order, the petitioner was being supplied relevant material in the form of evidence of the earlier proposal submitted by the respondent No. 7 through respondent No. 6 and a copy of the relevant rule.

8. The second reason mentioned in the impugned order is contrary to the letter and spirit of the decision dated 25th September, 2007 in W.P. (C) No. 14693/2006, titled ***Poonam Khattar versus LIC of India and Others***, by which the earlier impugned orders passed by respondent No. 1 withdrawing credit from the petitioner and issuing suitable credit to respondent No. 6 were set aside with the specific direction that the petitioner should be put to notice outlining the allegations made, so as to give her reasonable opportunity of hearing and a speaking order should be passed.

9. I have highlighted the relevant contentions and facts pointed out by the petitioner and the way and the manner in which they have been considered and examined in the impugned order to show that the

impugned order suffers from infirmities and illegalities relating to the decision making process and not the decision itself. The impugned order has rejected various contentions raised by the petitioner holding them to be irrelevant, when the allegations and the contentions made are material and proximate. Whether or not the second agent was aware of the earlier proposal by another agent, whether this fact was mentioned in the second proposal form is an important and a relevant factor. Similarly, whether the first agent had misguided or made false representations is a relevant factor before any credit for business can be given to the said agent. In the impugned order, the aforesaid contention has not been verified on the ground that they cannot change the outcome of the case. Conduct of an agent and allegations of a client, who avers misrepresentation have to be given due weightage and should not be ignored. Most importantly the impugned order completely discounts and fails to consider the factual aspects including the sequence of events and the conduct of respondent No. 1 corporation. The first proposal submitted by respondent No. 7 with respondent No. 6 as an agent was withdrawn by respondent No. 7 on 30th January 2003, one day after it was registered on 29th January, 2003. Confirmation letter was also submitted by the beneficiaries on 7th February, 2003 and the proposal was cancelled by the respondent No. 1 and refund cheque issued on 13th February, 2003. Respondent No. 7 submitted a fresh proposal through the petitioner as an agent on 31st January, 2003 on the same terms and for the same policies. Respondent No. 1 was, therefore, aware that the second proposal was submitted with

the petitioner as an agent before the cancellation of the first proposal was accepted on 13th February, 2003 and the premium amounts were refunded after some deductions. Respondent No. 1 Corporation should not have accepted withdrawal of the first proposal and refunded the premium paid in case there was violation of any rule or administrative instructions. Further, the first proposal was allowed to be withdrawn by the Respondent No.1 Corporation. Approval permitting the withdrawal cannot be ignored and regarded as inconsequential. Effect of withdrawal has to be considered.

10. The respondent No.1 has failed to notice matters and averments which called for attention and these were excluded from consideration and some allegations like misrepresentation, were not even subjected to verification. The statements of the purchaser of the policy i.e. respondent No.7 has been sidelined and his allegation and wishes ignored. Law requires application of mind to proximate and pertinent issues. Decision should be based and guided by reasons. Individuals should receive fair treatment. Judicial scrutiny while exercising power of judicial review depends upon factors like nature of rights, subject matter involved and consequences. Respondent No.1 while deciding the controversy is adjudicating rights and contesting claims of two agents and deciding which agent is entitled to get commission on the three policies. The respondent No. 1's role is that of a person who adjudicates disputes to the two contesting parties. Power of judicial review can be exercised when there is (i) illegality (ii) irrationality (iii) procedural impropriety and on some other

grounds. In ***Rameshwar Prasad Vs. Union of India***, (2006) 2 SCC 1, Arijit Pasayat J. has observed;

"240. A person entrusted with discretion must, so to speak, direct himself properly in law. He must call his attention to matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules he may truly be said to be acting unreasonably. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority.

241. It is an unwritten rule of law, constitutional and administrative, that whenever a decision-making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote."

11. After quoting the above passage, in ***Jayrajbhai Jayantibhai Patel Vs. Anil Bhai Nathubhai Patel***, (2006) 8 SCC 200, the Supreme Court quoted with approval the following passage from ***Greater Boston Television Corpn. Vs. FCC***, 444 F 2d 841;

"...the reviewing court must intervene if it 'becomes aware... that the agency has not really taken a "hard look" at the salient problems, and has not genuinely engaged in reasoned decision-making...."

12. The impugned order refers to LIC of India (Agent) Rules, 1972 and states that as per clause 8(d), there should not be any interference with a proposal introduced by another agent. The impugned order also refers to the so-called administrative instructions without quoting and reproducing

the same in the impugned order. Reference is also made to the Code of Conduct prescribed in IRDA Regulations, 2000 that no agent will interfere with any proposal introduced by any other insurance agent. However, the impugned order fails to notice and consider the effect of the respondent No. 1 acting upon the second proposal and permitting the first proposal to be withdrawn and refunding the cheque amounts after deductions in respect of the first proposal. Conduct of respondent No. 1 was a relevant fact which merited consideration and weightage. The effect of withdrawal letter dated 13th February, 2003 by which the premium paid under the first proposal was refunded after deducting processing charges and medical expenses has been ignored. The Rules, Code of Conduct etc. have not been interpreted and held that they will apply even where the first proposal is allowed to be withdrawn.

13. During the course of arguments, learned counsel appearing for respondent Nos. 1 and 6 had drawn my attention to administrative instructions mentioned to in the impugned order. The impugned order does not quote the said instructions or interpret them. It does not specifically examine the said instructions in detail except holding that the same are mandatory, legally abiding and apply automatically irrespective of the fact that whether an agent has acted bona fide and without knowledge. The said administrative instructions have been issued under the heading "HINTS to Agent" and read as under:-

"HINTS TO AGENTS

(1) xxxxx

(2) xxxxx

(3) From interfering in any way with proposers from whom other agents have already secured proposals which may be pending completion.

If an agent has already introduced a proposal and another agent interferes with the case and diverts the business to his agency by securing another proposal, it is the first agent who will be allowed the credit of the business even if the second proposal secured by the other agent results into a policy while the first proposal remains incomplete. The other agent can only get credit of the proposal introduced by him provided it results into a policy after the first proposal has become stale and is cancelled on the expiry of a period of one year from the date of completion of the proposal if under non-medical scheme or from the date of medical examination thereunder in other cases, or in the event of date of expiry of the period of postponement. The first agent should however, see that every effort is made to steer the first proposal to completion, without delay so as to leave no room for another agent to interfere with the proposal.

Note: For the purpose of these rules, an agent will be deemed to have introduced a proposal under his agency provided the proposal is registered in the Corporation's books on receipt of the basic requirements necessary for consideration thereof. "

14. A careful reading of the said administrative instructions shows that the first agent is entitled to the credit of business even if another proposal is submitted by the second agent, unless the first proposal has become stale and is cancelled on expiry period of one year from the date of completion. However, the said administrative instructions do not

specifically deal with the case where a first proposal is withdrawn and the respondent No.1 Corporation accepts the withdrawal and even refunds the premium deposited. In the present case, respondent No. 7 had withdrawn the first proposal and the withdrawal was accepted by the respondent No.1. The first proposal was in fact cancelled by the respondent No. 1 and the amounts paid by the respondent No. 7 were refunded after deducting administrative charges and medical fee. If the contentions of the respondent Nos. 1 and 6 are accepted as correct, then possibly no new proposal form can be accepted for a period of one year even if the client wants to change his agent. Such an interpretation is not in favour of respondent No. 1. The last portion of the said instruction stipulates that the first agent should, without delay make efforts to steer his proposal. Once a proposal is withdrawn, nothing remains to be executed or steered. Whether the said instruction will apply even in cases where a proposal after registration is allowed to be withdrawn and a new proposal is made through another agent within one year, has to be carefully deliberated in light of the language, implications and consequences in other cases. These aspects have not been considered and examined in the impugned order. As these aspects have been discounted and ignored, the matter should be examined afresh without being influenced by the earlier orders. It is clarified that the administrative instructions quoted above and its interpretation and applicability has to be considered by the respondent No.1. Observations made in this judgment are for the limited purpose of deciding this writ petition and the respondent No.1 will independently

apply their mind to the facts, allegations and respective pleas of the parties.

15. The impugned order dated 18th February, 2008 is quashed and set aside and the respondent No.1 is directed to decide afresh, the complaint made by the respondent No.6. In the facts of the present case there will be no order as to costs.

(SANJIV KHANNA)
JUDGE

JULY 22, 2009.
VKR/P